

**THE WOODLANDS AT YANKEE HILL  
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This The Woodlands at Yankee Hill Conditional Annexation and Zoning Agreement ("Agreement") is entered into between **Carl R. & Vicki A. Schmidt**, husband and wife; **SAP-SE, L.L.C.**, A Nebraska limited liability company; **Midwest Net Lease Investors-SE, L.L.C.**, a Nebraska limited liability company; and **Calruby, L.L.C.**, a Nebraska limited liability company (collectively, "Owner") and the **City of Lincoln, Nebraska**, a municipal corporation ("City").

**RECITALS**

A. Owner has requested the City to annex approximately 194.83 acres of land generally located on the east side of South 70th Street, south of Yankee Hill Road, legally described on Exhibit "A" attached ("Phase I Property"). Owner and City anticipate an additional 167 acres, legally described on Exhibit "B" attached, will be annexed at a later date ("Phase II Property"). The Phase I Property and Phase II Property are generally known as the Woodlands at Yankee Hill. The Phase I Property and the Phase II Property are collectively referred to as the "Property."

B. Owner has requested a change of zone ("Change of Zone No. 05068") to rezone approximately 162.98 acres of the Phase I Property from AG Agriculture District to R-3 PUD Planned Unit Development District. The portion of the Phase I Property within the proposed R-3 PUD district is legally described on Exhibit "B" attached. The R-3 PUD designation will also approve the associated development plan for 500 dwelling units and 324,000 square feet of office/medical, retail and commercial uses. It is anticipated that the Phase II Property will likewise be rezoned to R-3 PUD. It is further anticipated and the R-3 PUD designation and development plan for the Phase II Property will propose approximately 640 dwelling units and 276,000 square feet of office, retail and commercial uses, for a future combined total of 1140 dwelling units and 600,000 square feet of office, retail, and commercial uses.

C. The Phase I Property is located within a rural fire protection district. *Neb. Rev. Stat.* §35-514, dealing with the City's annexation of territory from rural fire protection districts, provides in part that: "(7) Areas duly incorporated within the boundaries of a municipality shall be automatically annexed from the boundaries of the district notwithstanding the provisions of §31-766 and shall not be subject to further tax levy or other charges by the district, except that before the annexation is complete, the municipality shall assume and pay that portion of all outstanding obligations of the district which would otherwise constitute an obligation of the area annexed or incorporated." The City is willing to annex the Phase I Property as requested by Owner, provided

Owner agrees to pay all costs needed for the City to assume and pay that portion of all outstanding obligations of the district which would otherwise constitute an obligation of the Phase I Property being annexed.

D. In order to provide water service to the Phase I Property, it will be necessary to obtain approval from Rural Water District No. 1, Lancaster County, Nebraska, hereinafter "District No. 1" in order for the City to furnish water to that portion of the Phase I Property located within the boundaries of District No. 1. The City is willing to annex the Phase I Property and rezone the Phase I Property as requested by Owner provided Owner agrees to pay all of the cost needed to obtain approval from District No. 1 for the City to furnish water for that portion of the Phase I Property located within the boundaries of District No. 1.

Therefore, the parties agree:

**1. Annexation:** The City agrees to annex the Phase I Property.

**2. Change of Zone:** The City agrees to approve Change of Zone No. 05068, designating the portion of the Phase I Property described on Exhibit "B" attached as R-3 PUD, and approving the associated development plan for 500 dwelling units and 324,000 square feet of office/medical, retail and commercial uses.

**3. Park Land Dedication.**

A. Dedication. As partial fulfillment of the 5.14 acre park dedication which could be required pursuant to Lincoln Municipal Code Section 26.23.160 for the proposed development of the Property, Owner agrees to dedicate at a location acceptable to the City 1.6 acres for a neighborhood park when the Phase I Property is final platted together with a 30-foot wide public access easement connecting the west side of the park to Waterfall. The Owner and City agree that the value of the park land and easement being dedicated is \$67,200.00.

B. Reimbursement. The City agrees to reimburse Owner for the value of the 1.6 acres of parkland dedicated pursuant to Paragraph 3A above, without interest from Neighborhood Park and Trail Impact Fees collected against the entire development of the Property up to the Directed Neighborhood Park and Trail Impact Fee Amount of \$359,410, which reflects the amount attributable to 100% development of the proposed development of the Property in 2006 based upon the 2006 Impact Fee Schedule. Reimbursement shall be subject to the following conditions:

(1) Said reimbursement shall be paid quarterly from impact fees actually received from this development;

(2) Any reimbursement to be paid from Impact Fees shall not constitute a general obligation or debt of the City.

#### 4. **Yankee Hill Road (70th - 84th) Improvements.**

A. Arterial Street Construction. Owner shall construct the Yankee Hill Road Arterial Street Impact Fee Facility Improvements, including right- and left-turn provisions at 70th Street, 73rd Street, 77th Street, and 81st Street as shown on Exhibit "C" attached pursuant to the City's Executive Order construction process.\* Turn lanes shall be constructed at a length and width acceptable to the City's Department of Public Works and Utilities. Owner shall request the Executive Order and provide all required bonds to guarantee construction of the Yankee Hill Road Arterial Street Impact Fee Facility Improvements and Site Related Turn Lanes on or before December 31, 2009. \*\*

\* & \*\* See page -3A-

#### B. Reimbursement.

(1) **Directed Arterial Street Impact Fees.** The City agrees to reimburse Owner for the cost to construct the Yankee Hill Road Arterial Street Impact Fee Facility Improvements between 70th and 84th Streets without interest from Arterial Street Impact Fees collected against the entire development of the Property up to the Directed Arterial Street Impact Fee Amount of \$4,136,715 which reflects the amount attributable to 100% development of the proposed development of the Property in 2006 based upon the 2006 Arterial Street Impact Fee Schedule. Reimbursement shall be subject to the following conditions:

(a) Said reimbursement shall be paid quarterly from Impact Fees actually received from this development;

(b) Any reimbursement to be paid from Impact Fees shall not constitute a general obligation or debt of the City.

(2) **Owner's Cost in Excess of Directed Arterial Street Impact Fees.** In the event Owner's cost of construction of the improvements described in A above are in excess of the Arterial Street Impact Fee Amount (\$4,136,715), City agrees to use its best efforts to reimburse Owner with interest for the excess cost from other Arterial Street Impact Fees collected from this and/or other developments within the same benefit district within eleven (11) years from the date the improvements described in B.(1) above are substantially completed as determined by the City, subject to the following conditions:

(a) The reimbursement shall be repaid quarterly from Arterial Street Impact Fees collected from the same benefit district the Property is located in;

(b) Owner shall not be entitled to any reimbursement of said costs in excess of Impact Fees actually received; and

(c) Any reimbursement to be paid from such Impact Fees shall not constitute a general obligation or debt of the City.

Interest on the outstanding balance shall draw interest at the rate of two percent (2%) per annum, provided, however, interest shall not begin to accrue until Owner advances any excess funds to the City. Notwithstanding the above, the City's best efforts to reimburse Owner with Impact Fees collected from other developments within the same benefit district does not restrict the

\* City shall budget and pay for one 12-foot wide lane at the same unit price provided in the successful bid for the project, and City obligates funding for its cost from existing Impact Fee funds in the Arterial Street Impact Fee Benefit District No. 6 Account.

\*\* Owner's bond to guarantee Owner's share of the cost shall provide for retainage based only upon Owner's share of the cost, not the entire cost of construction of the Yankee Hill Road Street Impact Fee Facility Improvements. City shall pay its share of the cost by paying to the paving contractor the first, and subsequent progress payments on the project as they become due, up to the full amount of the City's share of the cost of the project. In the event City fails to budget and appropriate funds for its share of the cost of the Yankee Hill Road Arterial Street Impact Fee Facility Improvements, Owner may proceed to construct Yankee Hill Road as depicted on Exhibit "C-1", pages 1 and 2, and be reimbursed for same as provided in Paragraph 4.b. below.

City from agreeing to reimburse future developers within the same benefit district from Directed Impact Fees collected against the entire development of their property if those developers fund the construction of Impact Fee Facility Improvements. If a developer does not fund the construction of Impact Fee Facility Improvements, the Impact Fees that are collected from that development shall be used to pay the oldest reimbursement obligation that the City may have in the same benefit district.

C. Site-Related Street Construction. Owner shall construct the Site Related Right-Turn Lanes at Mohave Drive and the driveway access into Block 1 through the City's executive order construction process at Owner's own cost and expense without any reimbursement from the City. Turn lanes shall be constructed at a length and width acceptable to the City's Department of Public Works and Utilities.

5. **Water Mains.** A 24-inch water main must be installed in South 84th from Amber Hill Road to Yankee Hill Road and a 16-inch water main must be installed in Yankee Hill Road from 84th Street to approximately 73rd Street and then extended south and west through the Phase I Property to 70th Street in order to provide water service to the Phase I Property and Phase II Property. City will not approve any application for building permit until the 16-inch main is installed. The City will use its best efforts to schedule the water mains for completion in the City's 2006-07 Capital Improvements Program; provided, however, Owner may construct the 16-inch water main through the City's executive order process. The 16-inch water main in Yankee Hill Road must be constructed prior to the pavement and installation of storm sewers in Yankee Hill Road. In order to locate the water main in the desired location and desired depth, a portion of a storm sewer culvert associated with the Yankee Hill Road improvements must be constructed along with the 16-inch water main. Owner understands and agrees that the construction of the storm sewer is considered a cost of the paving of Yankee Hill Road and not part of the cost to construct the 16-inch water main in Yankee Hill Road. Owner agrees to reimburse the City for the cost of the needed storm water culvert measuring approximately 75 feet to 80 feet of 60-inch RCP with an appropriate end treatment at an estimated cost of \$15,000.00, subject to reimbursement from Arterial Street Impact Fees as provided in Paragraph 4.B above. In the event the Owner constructs the 16-inch water main through the executive order process, the water main will not be a reimbursable Water Impact Fee Facility Improvement as the water main will be constructed diagonally following the street pattern through the Property and will be tappable and specifically benefit the adjacent properties. However, the City does agree in such event to reimburse Owner for the cost of the 16-inch water main (except for the City's fixed fee for engineering services) abutting residential zoned property in excess of the equivalent cost of a 6-inch water line and for the cost of the 16-inch water main abutting commercial zoned property (except for the City's fixed fee for engineering services) in excess of the equivalent cost of an 8-inch water line following completion of construction.

**6. Sanitary Sewer.** In order to sewer the Phase I Property and Phase II Property, it will be necessary for the City's Beal Slough Trunk Sewer main to be extended from its existing termination point to 70th and Yankee Hill Road. Construction of said extension of the Beal Slough Trunk Sewer main from its existing termination point to approximately 1/4 mile north of Yankee Hill Road is expected to be completed by the City by December, 2007. City agrees to use its best efforts to complete the remaining portion of the above-described extension to Yankee Hill Road by August, 2008, provided however, Owner may construct said extension through the City's executive order process. If Owner does construct the extension to Yankee Hill Road, Owner may further extend the Beal Slough Trunk Sewer through the Phase I Property to the south line of the Phase I Property. City agrees that the extension of the sewer to the south line of the Phase I Property is an Impact Fee Facility Improvement which will be more than 15 inches in diameter and therefore not tappable and will not specifically benefit the adjacent property. City agrees to use its best efforts to reimburse Owner for the entire cost of the Trunk Sewer (including design, construction, and City's fixed fee for engineering services) from appropriated funds for the year one of the 2008-2014 Six Year Capital Improvements Program. Best efforts is contingent upon the City Council approving future rate increases. Failure of the City Council to approve future rate increases shall not eliminate the obligation to reimburse Owner for said sewer main but will only delay said reimbursement. Sanitary sewer shall be constructed prior to annexation of the Phase II Property. Owner shall convey at no cost to the City the necessary easement for said sanitary sewer together with such temporary construction easements as may be necessary for construction of the sanitary sewer main.

If the City Council fails to approve future rate increases and funds to reimburse Owner are not appropriated in fiscal year 2008-2009, City also agrees that it shall segregate Wastewater Impact Fees collected from development within the Phase I Property and pay such fees to Owner until the entire cost of the trunk sewer is reimbursed to Owner. Use of impact fees to partially reimburse Owner during the period of any delay in reimbursement due to failure of the City Council to approve future rate increases shall not relieve the City of the obligation to reimburse Owner the entire remaining balance due upon appropriation of sufficient funds in the Capital Improvement Program to do so.

**7. Future Cost Responsibilities.**

A. Phase I Property. Owner understands and acknowledges that the proposed development of the Phase I Property shall be subject to the payment of Impact Fees and Owner agrees to pay said Impact Fees if development occurs.

B. Phase II Property. Owner understands that the development of the Phase II Property shall be subject to payment of Impact Fees and Owner agrees to pay said Impact Fees if development occurs.

**8. Development of Phase II Property.**

A. Annexation and Rezoning of the Phase II Property. City and Owner agree that the Phase II Property will be annexed, rezoned, platted, and developed in accordance with Recital B.

B. Future Infrastructure Improvements. The City and Owner agree that the infrastructure improvements identified in this agreement will serve development of the Phase II Property as described herein and will promote the general health and welfare of the City. In the event the Owner makes material modification(s) to the proposed development of the Phase II Property that would negatively impact the site-related and Impact Fee Facility wastewater, water, and arterial street improvements described herein, then the Owner and City agree that there will need to be appropriate amendment(s) to this Annexation Agreement to reflect such changes prior to the City's approval of the annexation of the Phase II Property.

**9. Contribution for Rural Fire District.** Owner understands and acknowledges that the City may not annex the Phase I Property lying within the boundaries of the Southeast Rural Fire District except by the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of the Property being annexed. Owner desires to be annexed by the City and therefore agrees to pay the amount which must be paid to the Southeast Rural Fire Protection District in order for the annexation to be complete. The parties anticipate that no payment shall be required.

**10. District No. 1.** Owner understands and acknowledges that the City may not furnish water to serve that portion of the Phase I Property lying within the boundaries of District No. 1 without the consent and approval of District No. 1. Owner desires to be connected to the City's public water system and therefore agrees to pay all the cost needed to obtain District No. 1's approval for the City to furnish water to the Phase I Property lying within the boundaries of District No. 1.

**11. Binding Effect.** This Agreement shall be binding upon the parties and their respective successors in interest and shall run with the Phase I Property.

**12. Amendments.** This Agreement may only be amended in writing signed by the parties.

**13. Further Assurances.** The parties shall use their best reasonable efforts to successfully perform this Agreement. The parties shall cooperate in good faith and shall perform any and all acts and execute, acknowledge, and deliver any and all documents reasonably requested in order to satisfy the conditions and carry out the intent and purposes of this Agreement.

**14. Governing Law.** This Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

**15. Interpretations.** No uncertainty or ambiguity shall be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

**16. Construction.** Whenever used herein, including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

**17. Relationship of Parties.** Neither the method of computation of funding or any other provisions contained in this Agreement or any acts of any party shall be deemed or construed by the City, Owner, or by any third person to create the relationship of partnership or of joint venture or of any association between the parties other than the contractual relationship stated in this Agreement.

**18. Assignment.** In the case of the assignment of this Agreement by any of the parties, prompt written notice and a copy of the assignment shall be given to the other parties by the assignor. Assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a written release is executed and delivered by the other parties to this Agreement.

**19. Default.** Owner and City agree that the annexation and special permit promote the public health, safety, and welfare so long as Owner fulfills all of the conditions and responsibilities set forth in this Agreement. In the event Owner defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority rescind the Change of Zone or pursue such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach.

**20. Definitions.** For purposes of this Agreement, the words and phrases "cost" or "entire cost" of a type of improvement shall be deemed to include all design and engineering fees, testing expenses, construction costs, publication costs, financing costs, and related miscellaneous costs, including any fees charged by the City. For the purposes of this Agreement the words and phrases "building permit", "development", "Impact Fee Facility", "Impact Fee Facility Improvement", and "site-related improvements" shall have the same meaning as provided for said words and phrases in the Impact Fee Ordinance.



**21. Recordation.** This Agreement or a memorandum or notice thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at Owner's expense.

Dated: \_\_\_\_\_, 2007.

ATTEST:

**THE CITY OF LINCOLN, NEBRASKA**  
a municipal corporation

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Coleen J. Seng, Mayor

**CARL R. SCHMIDT AND  
VICKI A. SCHMIDT, Husband and Wife**

\_\_\_\_\_  
Carl R. Schmidt (Husband)

\_\_\_\_\_  
Vicki A. Schmidt (Wife)

**SAP-SE, L.L.C.,**  
a Nebraska limited liability company

By: \_\_\_\_\_  
Managing Member

**MIDWEST NET LEASE INVESTORS- SE,**  
a Nebraska limited liability company

By: \_\_\_\_\_  
Managing Member

**CALRUBY, LLC,**  
a Nebraska limited liability company

By: \_\_\_\_\_  
Managing Member

STATE OF NEBRASKA       )  
  )ss.  
COUNTY OF LANCASTER   )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA       )  
  )ss.  
COUNTY OF LANCASTER   )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by Carl R. Schmidt and Vicki R. Schmidt, husband and wife.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA       )  
  )ss.  
COUNTY OF LANCASTER   )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_, Managing Member of SAP-SE, a Nebraska limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA       )  
  ) ss.  
COUNTY OF LANCASTER   )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_, Managing Member of Midwest Net Lease Investors- SE, a Nebraska limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA       )  
  )ss.  
COUNTY OF LANCASTER   )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_, Managing Member of Calruby, LLC, A Nebraska limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public

J:\CODE\AGR\Woodlands at Yankee Hill Annexation 3-21-07.wpd